IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 468 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PARBATSANG GULABSANG GADHVI & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR JD AJMERA for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 07/02/2007

ORAL JUDGMENT

1. The short facts of the case are that since the petitioners were holding agricultural land as

per the Mamlatdar and since the excess land was there, the proceedings were initiated under the Gujarat Agricultural Land Ceiling Act (hereinafter referred to as “the Act”) and vide order dated 26.2.1982, Mamlatdar found that there was no excess land since the petitioners would be entitled to two units and, therefore, proceedings were dropped. Thereafter, the State Government carried the matter in revision under Section 37 of the Act and in the said proceedings the Assistant Collector found that the petitioners would be entitled to only one unit and the land admeasuring 16 acres and 34 gunthas was declared as excess land. It appears that thereafter one Premjibhai Laljibhai moved an application to the Dy. Collector contending, inter lia, that the land admeasuring 8 acres and 12 gunthas was already purchased by him vide registered sale deed dated 27.5.1968 and, therefore, the said land be excluded. The said application was considered by the Dy. Collector and the order dated 30.6.1987 was passed by the Dy. Collector, cancelling the order of the

Mamlatdar and he further directed the Mamlatdar to consider the matter for declaration of the other land from the lands, which were in possession of the petitioners. It appears that thereafter the Mamlatdar once again considered the matter and vide order dated 18.12.1985, the Mamlatdar declared the land admeasuring 16 acres and 13 gunthas of the petitioners as excess. The petitioners carried the matter in appeal being Appeal No.19/1985 and the said appeal came to be dismissed as per the order dated 11.3.1986. The petitioners further carried the matter in revision before the Tribunal being Revision No.459 of 1986 and the Tribunal decided the revision on 8.9.1989, and the operative portion reads as under:-

> “The revision application is partially allowed. The orders of the Mamlatdar and Dy. Collector in so far as they declare 16 acres and 36 gunthas of the land as surplus is set aside and it is declared that 8 acres and 24 gunthas of the land should be declared as surplus and the matter be sent

to the Mamlatdar for declaring the surplus land after obtaining choice of the applicants.”

2. It is not in dispute that the said order of the Tribunal is not carried by the petitioners before the higher forum. Thereafter, Mamlatdar pursuant to the order passed by the Tribunal called upon the petitioners to give choice for surrendering of the land and as per the choice declared by the petitioners following land was declared as excess land as per the order dated 30.5.1990:

Sr. No.	Account No.	Plot No.	Area
1	189	106	5-22
2	152	41	0-38
3	201	35	2-04
		Total	8-24

3. It appears that the petitioners did not challenge the order of the Mamlatdar for declaration of the land as excess, but one Koli Nanu Buta preferred appeal and contended, inter alia, that out of the lands, which were declared as excess land, the land bearing Survey No.106 admeasuring 5 acres and 2 gunthas was in his

possession and the Civil Suit filed by the petitioners against him for the land in question being Civil Suit No.34 of 1983 was dismissed and the appeal was pending and, therefore, the Court had believed the ownership and under these circumstances, the said land be excluded from the declaration of the land as excess land. The Dy. Collector vide order dated 23.1.1991 dismissed the appeal and confirmed the order of the Mamlatdar. It appears that thereafter upon application of the State Government, the matter was further considered by the Mamlatdar for modification of the earlier order for declaration of the land as excess lands, but such lands were not available since the same was the disputed lands on the aspect of possession and as the petitioners were having other lands. The Mamlatdar ultimately passed the order on 10.5.1993, whereby the other lands belonging to the petitioners being Survey Nos.111, 7/1 and 44 total admeasuring 8 acres and 24 gunthas were declared as excess land. It appears that the petitioners carried the matter in appeal and the

said appeal came to be dismissed by the Dy. Collector vide order dated 20th September, 1993. The petitioners further carried the matter in revision before the Tribunal and the Tribunal dismissed the revision by confirming the order of the Mamlatdar and of the Dy. Collector and it is under these circumstances, the present petition.

4. Heard Mr.Ajmere, learned Counsel for the petitioners and Mr.Soni, learned AGP for the State Authoities.

5. Mr.Ajmere, learned Counsel for the petitioners raised the first contention that the petitioners would be entitled to three units namely; two for major son and one for mother and in support of his submission, he relied upon the decision of the Apex Court in the case of **"Khachar Bhikhubhai Unadbhai & Ors. v. State of Gujarat & Anr.", 1997(1) GLR, 132**, wherein the decision of this Court in case of **"Patel Kalasana.."** was approved. He, therefore, submitted that the order passed by the Mamlatdar at the first instance on 26.2.1982, though permitted only two

units and the petitioners were entitled to three units in view of the aforesaid decision, the order of the Assistant Collector of permitting only one unit vide order dated 31.3.1982 is ex-facie illegal and, therefore, if three units are considered or, in any case, two units are considered, no land will be required to be declared as excess and, therefore, this Court may take the view accordingly.

6. The aforesaid contention raised on behalf of the petitioners appears to be attractive, but upon clause scrutiny, cannot be accepted for the reasons stated hereinafter. The principal reason for not permitting the entertainment of such contention or rather rejection of the said contention is that in the earlier litigation, ultimately vide order dated 8.9.1989 of the Tribunal, the relevant operative portion of which already reproduced hereinabove, the Tribunal gave a conclusive declaration that the land admeasuring 8 acres and 24 gunthas be declared as excess land. It is not in dispute that the petitioners have not challenged the

said order before the higher forum and, therefore, the order passed by the Tribunal became final. Even in the reasoning recorded by the Tribunal in the impugned order dated 24.3.1995, it has been found by the Tribunal that earlier order of the Tribunal dated 8.9.1989 is not challenged before the High Court. Not only that, but later to the order dated 8.9.1989 passed by the Tribunal, the petitioners remained present before the Mamlatdar for giving choice for declaration of the land as excess land admeasuring 8 acres and 24 gunthas and the Mamlatdar acted upon such choice while passing the order dated 30.5.1990. The aforesaid clearly goes to show that the petitioners not only accepted the order of the Tribunal passed in 1989, but also acted upon such order. Thereafter, now the petitioners cannot be permitted to raise such contention at a stage when the Tribunal has just reiterated the same position as was declared in the year 1989 for declaration of the land admeasuring 8 aces and 24 gunthas as excess land. If the

petitioners are permitted to raise such contention, which the petitioners had not raised after 1989, it would result into disturbing the sanctity of the judicial order passed by the Tribunal qua the rights of the parties over the land in question. It is by now well settled that merely because the case law is changed or a different view is taken in the subsequent decision by the higher forum, is no justifiable reason to reopen or disturb the sanctity of the judicial decision, which has become final qua the rights of the parties. Even as per the provisions of C.P.C., no review is permissible on such ground. Therefore, under these circumstances, such a contention raised on behalf of the petitioners can neither be entertained, nor be accepted.

7. The reliance placed upon the decision of the Apex Court in case of **“Union of India and Ors. v. Narender Singh”, reported in 2005(6) SCC, 106** is ill-founded inasmuch as the Apex Court was considering the question in the said case for implementation of the order pending the

proceedings before the High Court. Such is not the fact situation in the present case and, therefore, the said decision is of no help to the petitioners. The decisions of the Apex Court upon which the reliance is placed by Mr.Ajmera, in case of **"U.P. State Spinning Company Limited v. R.S.Pandey and Anr.", reported in 2005(8) SCC, 264; and in case of "Durga Enterprises (P) Limited and Anr. v. Principal Secretary, Government of U.P. and Ors", reported in 2004(13) SCC, 665 is** ill-founded inasmuch as they pertain to the exercise of the power by this Court under Article 226 or 227 of the Constitution of India when there is alternative, efficacious remedy. In the present case, the contention raised on behalf of the petitioners in view of the reasons recorded hereinabove is not rejected on the ground of existence of the alternative remedy, but is rejected on the ground for maintaining the sanctity of the judicial decision and, therefore, the said decisions are of no help to the petitioners. The reliance placed upon the

decision of this Court in case of "**B.M. Jadav v. State of Gujarat & Anr.", reported in 1994(1) GCD 308 (Gujarat)** is also ill-founded because in the said case, the Court made the observations that the order of the Appellate Authority is not required to be considered, if the order of the first authority is in breach of the principles of natural justice. No question arises for consideration of such principles in the present case and hence, the said decisions are of no help to the petitioners. The reliance placed upon the decision of this Court in case of **"P.V. Makwana, Asstt. Engineer v. The Chairman, Gujarat Housing Board and Anr.", reported in 1995(1) GLH (UJ) 29** is also ill-founded inasmuch as in the said case, it was observed by the Court that if the petition is admitted, it should not be dismissed on the ground of delay. No such question arises for consideration in the present case. Hence, the said decision is of no help to the petitioners.

8. In view of the above, the contention of the petitioners of seeking entitlement of separate

unit for mother cannot be entertained on the fact situation of having accepted the order of the Tribunal dated 8.9.1989 by the petitioners long back not only in the year 1989, but thereafter they have acted upon the said order.

9. Mr.Ajmera, learned Counsel appearing for the petitioners raised another contention that if the land held by Koli Nanu Buta bearing Survey No.106 admeasuring 5 aces and 22 gunthas was to be excluded in the portion of the excess land on the basis that Civil Suit which was filed by the petitioners was dismissed, on the same reasoning the said land was also required to be excluded from the holding of the petitioners, since the petitioners were not found as owner by the Civil Court and Koli Nanu Buta was found as the owner. He also submitted that the appeal which was preferred against the decision of the Civil Court by the petitioners has been dismissed, but he is not aware as to whether any proceedings are carried by the petitioners in the said appeal before any higher forum. He, therefore, submitted that if the land admeasuring 5 acres

and 22 gunthas is excluded from the holding of the petitioners the net effect would be the declaration of the land as excess of about 3 acres and 2 gunthas. The said aspect is also not considered by the Tribunal and, therefore, this Court may consider the same.

10. If the contention is examined, it appears that the Civil Court dismissed the suit of the petitioners on 20th March, 1986 and the perusal of the judgement of the Civil Court shows that it is on account of the decision and on account of the revenue entry dated 4.9.1981 found in favour of the said defendants Koli Nanu Buta and others, the Court found that the suit of the petitioners for perpetual injunction deserves to be dismissed. The said judgement of the Civil Court was very much available to the petitioners when the Tribunal earlier decided the revision on 8.9.1989. In spite of the said decision, as observed earlier, the petitioners have not challenged the decision of the Tribunal and thereafter acted upon the said decision of the Tribunal while giving choice. Further, the

application of Koli Nanu Buta in the proceedings of the appeal No.2/90-91 vide order dated 23.1.1991 of the Dy. Collector was dismissed and in the said proceedings the petitioners were party. The petitioners have not challenged the said order and it is on account of the dispute between the petitioners and Koli Nanu Buta the choice given by the petitioners of land bearing Survey No.106 was not accepted and the other lands are declared as excess lands, but not exceeding the area admeasuring 8 aces and 24 gunthas. Therefore, now the petitioners cannot be heard to say that since the land, which is in possession of Koli Nanu Buta is not taken for choice for declaration of excess land, the same also deserves to be excluded from the holding of the petitioners. If such a contention is entertained, it would result into not only allowing the petitioners for readjudication of the question, which was concluded by the earlier order of the Tribunal dated 8.9.1989, but it may also result into permitting the petitioners to take undue benefit of his own action, which he

took while giving choice for declaration of the land bearing Survey No.106 admeasuring 5 acres and 22 gunthas as excess land. Further, if the land admeasuring 5 acres and 22 gunthas bearing Survey No.106 is now permitted to be excluded from the holding of the petitioners, the consequence would be to disturb the sanctity of the judicial order passed by the Tribunal dated 8.9.1989 for declaration of the land admeasuring 8 aces and 24 gunthas as excess land and, therefore, the said contention raised on behalf of the petitioners cannot be accepted.

11. In view of the above and in view of the reasons recorded by the Tribunal in the impugned order dated 24.3.1995, it cannot be said that any judicial error is committed, nor can it be said that the exercise of the discretion by the Tribunal is so perverse, which may deserve interference by this Court under Article 227 of the Constitution of India. In the result, the petition fails. Rule discharged. I.R., if any, shall stand vacated. Considering the facts and circumstances, there shall be no order as to

costs.

7.2.2007 **(Jayant Patel, J.)**

vinod